

# Exhibit H

**Dougherty, Jeffrey**

---

**From:** Dougherty, Jeffrey  
**Sent:** Wednesday, August 30, 2006 3:56 PM  
**To:** James Meyerson  
**Subject:** RE: Hershey-Wilson v. City of NY

Jim:

Wow! You really misconstrued what I was attempting to accomplish with that email. I just thought it would be premature and convoluted to get into citing or distinguishing these cases in any potential applications to Francis regarding the scheduling of depositions. Which I hope now, are unnecessary. Very simple reasoning actually, no clandestine motives.

Anyway -- if you are that interested in these cases for other reasons, such as advising your client on the impact of refusing to comply with court orders, then by all means review them.

See, e.g., *In re Rezulin Products Liability Litigation*, 223 F.R.D. 109, 111, 113-14 (S.D.N.Y. 2004) (dismissing complaints with prejudice where material deficiencies in plaintiffs' discovery prejudiced defendants by "depriv[ing] them of the information necessary to move the cases forward"), reconsideration denied in all material respects, 2004 WL 1700618; *In re Agent Orange Product Liability Litigation*, 611 F. Supp. 1290, 1294 (E.D.N.Y. 1985) (dismissing plaintiff's action and reasoning that "plaintiff, having placed the origin of his illness in issue, may not now refuse to cooperate with defendants in discovery concerning the crucial question of causation"), *aff'd*, 818 F.2d 210, 212 (2d Cir. 1987).

Thank you.

-Jeff D.

-----Original Message-----

**From:** James Meyerson [mailto:jimeyerson@yahoo.com]  
**Sent:** Wednesday, August 30, 2006 3:44 PM  
**To:** Dougherty, Jeffrey  
**Subject:** Re: Hershey-Wilson v. City of NY

Dear Jeffrey Dougherty:

Thanks for your clarification and I look forward to your advisement, next week, as to when Bologna will be scheduled. I spoke with Fred Weiler about such today. I also await your advisement, next week, about the scheduling of Crimmins. I appreciate your advisement as to the date of the next conference. Because of a scheduling conflict, I will not be able to attend that conference.

Finally, what's the big deal. Share the cases with me which you propose would compel the dismissal of the case if Ms. Hershey-Wilson declined to produce any records which she was directed to produce [or authorizations associated therewith]. Come on, this is not that kind of game and, to the extent that you and yours litigate such, to what point? If there is something which you believe suggests that, if my client does what we have discussed is an option, the case will be dismissed, I would be interested in knowing from you, in the context of the cooperative adversarial relationship, what case or two cases you have that suggests the same. Again, you are much too young in your professional career to learn to litigate that way. Try the old fashioned way where the game does not become the end in and of itself but a means to achieving justice? yeah, justice? I mean, what's in the tactic. Share the information as I would do if you proposed something I was endeavoring to point out that, to do such, would have an adverse impact on you. Again, I don't believe that Karas would ever dismiss the case if the option, which we discussed, was pursued. But I can be wrong as you can be wrong and we ought to try and see whether that option and the fight is worth it to you and/or to my client.

Thank you so much for all of your attention, kindness, understanding, consideration, patience, indulgence, efforts, advisement, acknowledgement, and confirmation herein.

Sincerely yours,

James I. Meyerson

--- "Dougherty, Jeffrey" <jDougher@law.nyc.gov> wrote:

> Mr. Meyerson:  
>  
> The next RNC status conference is 9/15/06 at 11:30 AM. Additionally,  
> I wanted to clarify defendants position on Officer Cai's deposition.  
> At this time we are not objecting to producing him. Instead I only  
> intended to advise you as to the order in which we will be producing  
> the witnesses you wish to depose. We will initially produce Bologna,  
> followed by Crimmins and then we will produce Officer Cai. I  
> discussed the rationale with you in our recent telephone conversation.  
> If you desire further clarification please advise. Finally, I believe  
> it is premature to cite authority on the dismissal of actions for  
> failure to comply with Court orders in light of my clarification  
> regarding the order of production of witnesses. Should this issue go  
> to the mat I will be happy to share any relevant cases with you.  
> Thank you.  
>  
>  
> Jeffrey A. Dougherty, Esq.  
> Special Assistant Corporation Counsel  
> Office of the Corporation Counsel  
> Special Federal Litigation Division  
> 100 Church Street, Room 3-126  
> New York, New York 10007  
> 212-788-8342  
> 212-788-9776 (Fax)  
>  
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>

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# Exhibit I

James I. Meyerson  
396 Broadway-Suite #601  
New York, New York 10013  
[212] 226-3310  
[212] 219-9412/FAX  
ATTORNEY AT LAW

October 9, 2006

The Honorable Kenneth M. Karas  
United States District Judge  
Southern District of New York  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

RE: Kyla Hannah Hershey-Wilson vs The City of New  
York, etc., et al./05 Civ 7026/KMK/JCF/SDNY

Dear Judge Karas:

After reviewing the Court's September 20, 2006 Order and discussing such with the Plaintiff and the various options associated therewith, my client has indicated that she is not prepared to authorize the production of the records to anyone, including herself [she has never seen the records and does not know what is contained in the records].

That being stated however and in lieu of producing the records, the Plaintiff has authorized me to advise the Court that she is prepared to withdraw the emotional injury damage claims she has asserted with respect to the substantive claims encompassed in the litigation. In doing so, of course, the Plaintiff does the same without prejudice to addressing, on any subsequent appeal [if any], the ruling[s] which Court has made with respect to the production of the mental health and family counseling records related to the Plaintiff for services rendered to her while she was in high school, the result of which Order[s] has propelled the Plaintiff, now, to withdraw the claims for the narrowly defined emotional injury damages which the Plaintiff has outlined and defined previously in the course of the arguments made to the Court over the production of the mental health records at issue herein.

If the Court feels that a conference is desirable to address the matter, I am available to appear. Otherwise, I would ask that the Court endorse this letter authorizing the withdrawal of the emotional injury damage claims and denying the Defendants' counsel access to the previously ordered records at issue herein; and/or that the Court issue an Order and directive encompassing the positions set forth herein.

Thank you so much for all of your attention, kindness, understanding, consideration, patience, indulgence, efforts, advisement, acknowledgement, and confirmation herein.

Sincerely yours,  
/s/James I. Meyerson  
James I. Meyerson  
JIM

copy:

The Honorable James F. Francis, IV	[via fax @ (212) 805-7930]
Jeffrey Dougherty, Esq.	[via fax @ (212) 788-9776]
Ms. Kyla Hannah Hershey-Wilson	

# Exhibit J



**MICHAEL A. CARDOZO**  
Corporation Counsel

**THE CITY OF NEW YORK**  
**LAW DEPARTMENT**  
100 CHURCH STREET  
NEW YORK, NY 10007

**JEFFREY A. DOUGHERTY**  
Special Assistant Corporation Counsel  
Room 3-126  
Telephone: (212) 788-8342  
Facsimile: (212) 788-9776  
[jdougher@law.nyc.gov](mailto:jdougher@law.nyc.gov)

**BY FACSIMILE**

October 30, 2006

The Honorable James C. Francis IV  
United States Magistrate Judge  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street – Room 1960  
New York, New York 10007-1312

**Re: *Hershey-Wilson v. City of New York, et al.* 05 CV 7026 (KMK)(JCF)**

Dear Judge Francis:

Defendants write in response to Mr. Meyerson's letter dated October 26, 2006 in which plaintiff Kyla Hannah Hershey-Wilson ("Plaintiff") requested that the Court issue an order dismissing Plaintiff's emotional distress claims and forego the November 9, 2006 meeting with all parties. Defendants believe that the terms of the dismissal of Plaintiff's emotional distress claims should preclude Plaintiff from testifying or arguing emotional distress damages at trial. Defendants request that the November 9, 2006 meeting remain on the calendar as scheduled so that this issue can be addressed. Thank you.

Very truly yours,

A handwritten signature in black ink that reads "Jeffrey A. Dougherty".

Jeffrey A. Dougherty

cc: James I. Meyerson, Esq. (by Facsimile)

Exhibit K

James I. Meyerson  
396 Broadway-Suite #601  
New York, New York 10013  
[212] 226-3310  
[212] 219-9412/FAX  
ATTORNEY AT LAW

FAX/TWO [2] PAGES @ [212] 805-7930  
October 31, 2006

The Honorable James C. Francis, IV  
United States Magistrate Judge  
Southern District of New York  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

RE: Kyla Hannah Hershey-Wilson vs The City of New  
York, etc., et al./05 Civ 7026/ (KMK) (JCF)/SDNY

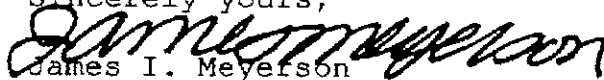
Dear Magistrate Judge Francis:

I am in receipt of a copy of the City's fax transmitted October 30, 2006 letter. While I have no problems discussing the matter at the conference on November 9, 2006, it remains my position that the only appropriate sanction is the dismissal of the claims. To the extent that there is an issue about evidence to be presented at trial—that is what the Plaintiff and her counsel can present and argue during the trial, such is better left to the trial Judge at the time of trial and an in limine motion associated with the presentation of evidence and argument in this respect.

At this point and in light of the refusal of the Plaintiff to provide the authorizations for the Plaintiff's pre RNC arrest incident mental health service records previously ordered by the Court to be produced during discovery, this Court should, as the appropriate sanction, simply dismiss the emotional reaction injury damage claims to which the Plaintiff has made reference in her Complaint and as subsequently described in the written submissions before the Court with respect to the contest over production of the pre-RNC arrest incident mental health service records. Such is what your Honor did, without qualification or expansion, in the Concepcion litigation and nothing more is now required in this litigation.

Thank you so much for all of your attention, kindness, understanding, consideration, patience, indulgence, efforts, advisement, acknowledgement, and confirmation herein.

Sincerely yours,

  
James I. Meyerson

JIM

copy:

Jeffrey Dougherty, Esq.

[via fax @ (212) 788-9776]

## hp LaserJet 3380

Law Offices of Claudia Slovinsky  
212-219-9412  
Oct-31-2006 9:54AM



## Fax Call Report

Job	Date	Time	Type	Identification	Duration	Pages	Result
997	10/31/2006	9:53:54AM	Send	12128057930	0:42	2	OK

At this point and in light of the nature of the plaintiff's incident mental health records previously ordered by the Court to be produced during discovery, this Court should, as the appropriate sanction, simply dismiss the motion without prejudice to which the plaintiff has made reference in her Complaint and as subsequently described in the written production of the pre-RMC arrest incident mental health records. Such as what your Honor did, without qualification or expansion, in the Commission litigation and nothing more is now required in this litigation.

I am in receipt of a copy of the City's fax transmitted October 30, 2006 later. While I have no problems disagreeing the position that the only appropriate sanction is the dismissal of the claims. To the extent that there is an issue about evidence to be presented at trial that the plaintiff and her counsel can present and argue during the trial, such as the fact that the trial judge at the time of trial and in finding motion associated with the presentation of evidence and argument in this respect.

Dear Magistrate Judge Francis:

RE: Kyle Hannah Hershby-Wilson vs The City of New York, etc., et al./05 Civ 7026/ (HRH) (JCF)/SINY

New York, New York 10007  
500 Pearl Street  
United States Courthouse  
Southern District of New York  
United States Magistrate Judge  
The Honorable James C. Francis, IV

October 31, 2006  
PAX/Two (2) PAGES & (212) 805-7930

James I. Neverson  
396 Broadway-Suite 601  
New York, New York 10013  
[212] 226-3310  
[212] 219-9412/FAX  
ATTORNEY AT LAW

Exhibit L

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

(ECF)

-----  
KYLA HANNAH HERSHEY-WILSON,

: 05 Civ. 7026 (KMK) (JCF)

Plaintiff,

: O R D E R

- against -

THE CITY OF NEW YORK, et al.,


Defendants.  
-----

JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 11/13/06

Plaintiff having been ordered to produce medical and psychological records in connection with her claims of mental and emotional distress, and plaintiff having declined to do so, it is hereby ORDERED that, as an appropriate sanction pursuant to Rule 37(b)(2) of the Federal Rules of Civil Procedure for violation of a discovery order, plaintiff's claims of mental and emotional injury are hereby dismissed.

SO ORDERED.

  
JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York  
November 13, 2006

Copies mailed this date:

James I. Meyerson, Esq  
396 Broadway, Suite 601  
New York, New York 10013

Jeffrey A. Dougherty, Esq.  
Special Assistant Corporation Counsel  
City of New York Law Department  
100 Church Street  
New York, New York 10007

**Exhibit M**



MICHAEL A. CARDOZO  
Corporation Counsel

THE CITY OF NEW YORK  
LAW DEPARTMENT  
100 CHURCH STREET  
NEW YORK, NY 10007

JAMES MIRRO  
Special Assistant Corporation Counsel  
phone (212) 788-8026 fax (212) 788-9776

March 23, 2006

**BY FAX**

James I. Meyerson, Esq.  
396 Broadway – Suite 601  
New York, New York 10013

Re: Cohen v. The City of New York, et al.  
USDC SDNY 05 CV 6780 (KMK) (JCF)

Kornicke v. The City of New York, et al.  
USDC SDNY 05 CV 7025 (KMK) (JCF)

Dear Jim:

This confirms our conversation yesterday, in which I advised you that plaintiff Julia Cohen's discovery responses in this case are insufficient. We need more complete responses before proceeding with Ms. Cohen's deposition. Despite your assurances that the responses are complete when considered in light of her 50(h) testimony, that testimony does not provide the missing information. In fact, that testimony only underscores the serious deficiencies in her written discovery responses.

This also confirms that you agreed yesterday to dismiss Chris Kornicke's case. As you know, we were scheduled to go forward with plaintiff Kornicke's deposition on March 2, 2006. Shortly before that deposition, at your request, I agreed to adjourn that deposition. I did so amicably and without any fuss whatsoever. I would appreciate a return of that kind of courtesy rather than more invective of the kind that I heard on the phone yesterday.

Julia Cohen's Medical Issues

As you know, in her complaint, plaintiff Cohen claims to have "suffered injuries and damages, which were the proximate result of, her probable cause lacking, intentional, malicious, arrest, preferral of charges and prosecution. . . ." Complaint ¶ 47 (sic). Plaintiff claims to have suffered "anxiety, humiliation, embarrassment, mental anguish, emotional distress, and psychological trauma, the valuation of which is substantial and includes, in terms of damages, both compensatory and punitive damages." Complaint ¶ 54. She further alleges that she suffered from "the denial of adequate medical treatment." Complaint ¶ 57.

When I spoke with you by phone yesterday, I noted that, in their interrogatories, defendants had asked plaintiff to identify her medical providers. Plaintiff's response, in its entirety, is that "Plaintiff objects to the Discovery Request herein." Response to Interrogatory # 5. Defendants asked plaintiff to identify all pharmacies or other providers of prescription drugs who provided drugs for the benefit of plaintiff. Plaintiff's response is that "Plaintiff objects to the Discovery Request herein." Response to Interrogatory # 6. Defendants asked plaintiff whether plaintiff has made a claim with any insurance carrier for physical, mental or emotional injuries. Plaintiff's response is that "The Plaintiff objects to the Discovery Request herein." Interrogatory Response # 10. Plaintiff similarly has objected to providing any medical records or medical releases of any kind. Response to Document Request ## 3, 14, 23.

These responses are completely inadequate. You said that plaintiff's interrogatory responses and document responses should be read along with her 50(h) hearing testimony. During her 50(h) hearing, plaintiff testified that she "was under doctor's care when [she] was arrested and [she] had follow-ups as a result of an exacerbation of a condition that I had when I was arrested." (50(h) at 25:17). That condition was a "bronchial infection." (50(h) at 25:22). She later identified the doctor who treated her as Dr. Markowitz. (50(h) at 26:9 and errata sheet). She claimed additional injuries involving her "shoulders and my wrist and my feet." (50(h) at 26:22). In addition, she testified that she became "very depressed and upset and fearful." (50(h) at 26:24). She testified that she had pre-existing shoulder and foot injuries for which she had received treatment. (50(h) at 28:18, 29:13). She also testified that she was on two forms of medication during the 24 hours before her arrest (50(h) at 6:10), one of which was for her pre-existing bronchial infection. (50(h) at 6:17).

As you know, Defendants are entitled to examine plaintiff with respect to any medical conditions that she has put into issue in this action. You are, of course, aware of Judge Karas' August 29, 2005 rulings in MacNamara and of Judge Francis' ruling in Hershey-Wilson and the related briefing in that case that demonstrates the overwhelming weight of legal authority -- particularly in the Southern District of New York -- on which Judge Karas' and Judge Francis' rulings rest. If the reason that your client has not produced a shred of medical information is that she intends to withdraw her medical and emotional distress claims in their entirety, then you ought to advise me of that fact and we will enter into a written agreement. I can then proceed to prepare to depose her on the issues remaining. I have no interest in preparing to examine your client on the broad range of medical and emotional issues that she has put into issue only to learn at the deposition that she does not intend to pursue any of them. This is a waste of my time, yours and hers.

#### Julia Cohen's Additional Defaults

- Plaintiff was asked by defendants to identify any testimony or statements given by plaintiff regarding the incident about which she complains. She admitted that "Plaintiff did provide an Affidavit about the length of her detention in the post arrest State court habeas corpus proceeding," but she has refused to provide a copy of it. Response to Interrogatory # 16.
- Plaintiff similarly has refused to answer Interrogatories calling for the most mundane information, such as her employment history (#4) and her educational

history (#14).

- Defendants asked plaintiff to identify documents that are in the possession, custody or control of plaintiff that relate to the particular subjects of this case. Plaintiff responded that she was providing "copies of video tapes, some of which the City already possesses and some of which the City does not possess," but in fact plaintiff has not provided any video tapes. Response to Interrogatory #17. In addition, you have not provided a copy of the "dvd of some relevant videographed images" to which you refer in one of your letters to me.
- In her 50(h), she testified that she photographed officers during her bike protest, but she has produced no such photographs. (50(h) at 10:15).
- In her 50(h), she testified that she "was on her cellular phone reporting the fact that arrests were being made" immediately before she was arrested, but she has not produced her cell phone records. (50(h) at 11:7). Please produce unredacted copies her cell phone records for the two weeks preceding and following her arrest.
- Defendants asked plaintiff to identify any web sites, newspapers or other sources she consulted in the four weeks preceding the Convention that discussed or provided information concerning protests, marches, rallies or other Convention-related activities. Plaintiff's response is that "The Plaintiff objects to the Discovery Request herein." Response to Interrogatory #19.
- Plaintiff was asked to produce any diaries, calendars or emails, among other things, that reflect any plans to attend rallies, marches or protests, or to participate in civil disobedience, in the weeks before and after the Convention. Plaintiff simply has objected. Response to Document Request ## 9, 10, 11.

We are entitled to answers to these questions and to plaintiff's sworn affirmation that her answers are complete and accurate. If I have overlooked information that you have previously provided that is responsive to these requests, please advise me. If Julia Cohen intends to dismiss all or part of her action that puts into issue the foregoing information, and that is the reason that you have not responded, then please advise me and I will draft an appropriate stipulation.

Otherwise, I will expect answers to these requests before taking Julia Cohen's deposition. If plaintiff does not intend to comply, then please advise me at once, so I may ask Judge Francis to enter an appropriate order. Thanks for your cooperation.

Very truly yours,

  
James Mirro

# Exhibit N

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

JULIA R. COHEN,

PLAINTIFF,

vs

05 Civ 6780 (KMK) (JCF)

THE CITY OF NEW YORK, etc., et al.,

DEFENDANTS.

-----X

PLAINTIFF COHEN'S RESPONSES TO THE DEFENDANTS' FIRST SET OF  
ININTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS  
TO PLAINTIFF JULIA R. COHEN

Now comes the Plaintiff Julia R. Cohen, by and through her attorney James I. Meyerson, Esq., 396 Broadway-Suite # 601, New York, New York 10013 [212] 226-3310, and hereby and herein responds to the Defendants' Initial Discovery Requests. In responding, the Plaintiff reserves all of her rights and objections [general and specific] and, by responding, the Plaintiff does not waive any rights or objections [general and specific].

### INTERROGATORIES

1. Identify all persons who witnessed, were present at, or have knowledge of the incident, including the home and business addresses and telephone numbers of each witness. If you are unable to identify any of the individuals within the meaning of Local Rule 26.3, describe that individual's physical appearance.

[i] the Plaintiff; [ii] the Defendant parties; [iii] others arrested at the time and place of the Plaintiff's arrest; [iii] individuals in the New York County District Attorney's Office; [iv] Elizabeth Fink, Esq.; [v] unidentified New York City Police Officers; [vi] Paul Higgins; [vii] Gideon Oliver; [viii] other individuals arrested at the time and place of the Plaintiff's arrest; [ix] unidentified by-standers. See: Plaintiff's Rule 26 Voluntary Disclosures and documents associated therewith and inter-related thereto.

2. Identify all injuries claimed by Plaintiff as a result of the incident and the medical, psychiatric, psychological, and other treatment provided. For any treatment received, identify the provider who treated Plaintiff, including the provider's name, address, telephone number and dates of treatment. If no injury is claimed, please so state. If no treatment was received, please so state.

The Plaintiff did not suffer lost wages or any monies for psychiatric, mental health care or other medical services and treatment related to injuries arising out of the incident which gives rise to this litigation since the Plaintiff received no mental health care treatment or service or medical treatment for any injuries which she claims to have suffered as a consequence of the incident. The Plaintiff did not incur any attorney's fees related to the within matter. The Plaintiff was injured by the fact of the violation of her constitutional and civil rights [First and Fourth Amendments] and by the loss of her liberty associated therewith; and the Plaintiff suffered emotional and mental anguish associated therewith. Because of her position as an attorney, such distress and anguish and anxiety, associated with her arrest, the preferral of charges, and the detention, was intensified. See: Plaintiff's Rule 26 Voluntary Disclosures and documents associated therewith and inter-related thereto.

3. Identify all economic injuries claimed by Plaintiff as a result of the incident including, but not limited to, expenditures for medical, psychiatric, or psychological treatment; lost income; property damage; and any other economic injury. Identify the specific amounts claimed. If no economic injury or damage is claimed, please so state.

See: Response to Discovery Request # 2 herein. See also: Plaintiff's Rule 26 Voluntary Disclosures and documents associated therewith and inter-related thereto.

4. Identify all of Plaintiff's employers for the past ten (10) years, including the name, telephone number and address of each employer and the dates of each employment. If there were periods of unemployment, please so state.

Plaintiff objects to this Request. See: Plaintiff's Rule 26 Voluntary Disclosures and documents associated therewith and inter-related thereto including the Plaintiff's 50[h] hearing testimonies transcript as part thereof.

5. Identify all medical providers including, but not limited to, doctors, hospitals, psychiatrists, psychologists, social workers and other counseling services, who have rendered treatment to the Plaintiff within the past ten (10) years. Include the name, address, and telephone number of the provider, the condition(s) for which Plaintiff was treated by that provider, and the date(s) of treatment.

Plaintiff objects to the Discovery Request herein.

6. Identify all pharmacies or other providers of prescription drugs who provided prescription drugs for the benefit of Plaintiff at any time in the past ten (10) years, identifying the name, address and telephone number of the

VERIFICATION

Julia Cohen, being first duly sworn, deposes and says:

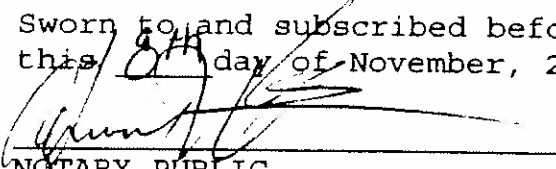
1. I have read the foregoing Responses which were prepared by my attorney, James I. Meyerson; and I have provided my counsel information.

2. The information contained in the Responses is accurate and true of my own knowledge and belief. The Responses are also prepared and set forth upon advice of my attorney.

Respectfully submitted,

  
JULIA COHEN

Sworn to and subscribed before me  
this 8th day of November, 2005.

  
NOTARY PUBLIC

My Commission Expires: 7/12/2007

ADRIENNE WARDEN  
Notary Public, State of New York  
No. 01WA6027786  
Qualified in New York County  
Commission Expires 7/12/2007

# Exhibit O



MICHAEL A. CARDOZO  
Corporation Counsel

THE CITY OF NEW YORK  
LAW DEPARTMENT  
100 CHURCH STREET  
NEW YORK, NY 10007

JAMES MIRRO  
Special Assistant Corporation Counsel  
phone (212) 788-8026 fax (212) 788-9776

November 6, 2006

**BY FAX & BY HAND**

The Honorable James C. Francis IV  
United States Magistrate Judge  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street - Room 1960  
New York, New York 10007-1312

Re: **Cohen v. The City of New York, et al.**  
**USDC SDNY 05 CV 6780 (KMK) (JCF)**

Dear Judge Francis:

I write in response to James I. Meyerson's letter to you dated October 27, 2006 ("Plaintiff's Letter"). For the reasons that follow, defendants request that the Court dismiss this action in its entirety based upon plaintiff's long-standing refusal to comply with defendants' discovery requests.

**Plaintiff Cohen's Previous Refusals To Respond To Discovery**

Before commencing the present action, plaintiff was one of 24 named plaintiffs in the related MacNamara "class" action. On or about May 20, 2005, defendants served plaintiffs in MacNamara, including plaintiff Cohen, with interrogatories and document requests including requests for the names of (and releases for) medical and mental health providers. In anticipation of timely responses to those requests, on June 15, 2005 defendants noticed plaintiff Cohen's deposition.

On July 5, 2005, plaintiff Cohen's then-counsel stipulated that "plaintiffs' responses to the City's interrogatories and document requests . . . along with all executed releases, shall be served upon the City . . . no later than July 18, 2005." Judge Karas ordered the same with respect to all plaintiffs in MacNamara on July 19, 2005. Plaintiff Cohen never responded to any of defendants' discovery requests in MacNamara. Instead, on July 25, 2005, she stipulated to dismiss her claims voluntarily in that action.

**Plaintiff Cohen's Current Claims**

On July 28, 2005, plaintiff filed and served this action. In her complaint, plaintiff claims to have "suffered injuries and damages, which were the proximate result of, her probable cause lacking, intentional, malicious, arrest, preferral of charges and prosecution. . . ." Complaint ¶ 47 (sic) (Exhibit "A" hereto).

During her 50(h) hearing, which was conducted on June 29, 2005, plaintiff testified that she "was under doctor's care when [she] was arrested and [she] had follow-ups as a result of an exacerbation of a condition that I had when I was arrested." (50(h) at 25:17). That condition was a "*bronchial infection*." (50(h) at 25:22). She later identified the doctor who treated her as Dr. Markowitz. (50(h) at 26:9 and errata sheet). She also testified that she was on two forms of medication during the 24 hours before her arrest (50(h) at 6:10), one of which was for her bronchial infection. (50(h) at 6:17).

In addition, plaintiff testified that she had injuries involving her "*shoulders [and] wrist [and] feet*." (50(h) at 26:22). She testified, further, that she had pre-existing shoulder and foot injuries for which she had received treatment. (50(h) at 28:18, 29:13).

Plaintiff also claims to have suffered "*anxiety, humiliation, embarrassment, mental anguish, emotional distress, and psychological trauma, the valuation of which is substantial and includes, in terms of damages, both compensatory and punitive damages*." Complaint ¶ 54 (emphasis added) (Exhibit "A" hereto). During her 50(h) hearing, she testified that she became "very depressed and upset and fearful." (50(h) at 26:24). In response to an interrogatory, plaintiff repeated that she "suffered emotional and mental anguish" as a result of her arrest and detention. Response to Interrogatory #2 (Exhibit "B" hereto).<sup>1</sup> Plaintiff added that "Because of her position as an attorney, such distress and anguish and anxiety, associated with her arrest, the preferral of charges, and the detention, was intensified." *Id.* (emphasis added).

Plaintiff further alleges in her Complaint that she suffered from "the denial of adequate medical treatment." Complaint ¶ 57.

**Plaintiff Cohen's Refusal To Produce Relevant Information**

In their interrogatories, defendants asked plaintiff to identify "all medical providers including, but not limited to, doctors, hospitals, psychiatrists, psychologists, social workers and other counseling services, who have rendered treatment to the Plaintiff within the past ten (10) years." Plaintiff's response, in its entirety, is that "Plaintiff objects to the Discovery Request herein." Response to Interrogatory # 5 (Exhibit "B" hereto).

Defendants asked plaintiff to identify "all pharmacies or other providers of prescription drugs" to plaintiff for any related conditions. Plaintiff's response is that "Plaintiff objects to the Discovery Request herein." Response to Interrogatory # 6 (Exhibit "B" hereto).

<sup>1</sup> Defendants served plaintiff Cohen with interrogatories and document requests in this action on October 28, 2005..

Defendants asked plaintiff “whether plaintiff has made a claim with any insurance carrier for . . . mental or emotional injuries within the past ten (10) years and, if so, identify each claim by date, injury and insurance carrier.” Plaintiff’s response is that “The Plaintiff objects to the Discovery Request herein.” Response to Interrogatory # 10 (Exhibit “B” hereto).

Plaintiff similarly has objected to providing any medical or counseling records, or medical or counseling releases, of any kind (except that she has provided a release for the records of Dr. Markowitz). Responses to Document Requests ## 3, 14, 23 (Exhibit “B” hereto).

Defendants asked plaintiff to identify any testimony or statements given by plaintiff regarding the incident about which she complains. She admitted that “Plaintiff did provide an Affidavit about the length of her detention in the post arrest State court habeas corpus proceeding.” Nevertheless, she has not produced a copy of it. Response to Interrogatory # 16 (Exhibit “B” hereto).

Defendants asked plaintiff to produce any diaries, calendars or emails, among other things, that reflect any plans to attend rallies, marches or protests, or to participate in civil disobedience, in the weeks before and after the Convention. Plaintiff simply has objected. Response to Document Requests ## 9, 10, 11 (Exhibit “B” hereto).

**Plaintiff Has Been On Notice Of These Deficiencies For Over Seven Months**

On March 23, 2006, defendants advised plaintiff in writing that her discovery responses were wholly inadequate and that proper responses would be required (Exhibit “C” hereto). Proper responses never have been provided. Nor has plaintiff agreed – despite defendants’ express written invitation in the letter of March 23 -- to withdraw her physical and emotional damage claims as an alternative to producing the necessary medical records.

In her letter to the Court of October 27, 2006, plaintiff ignores most of defendants’ demands. With respect to the one category of records that plaintiff does address -- her counseling records -- she declares flatly that she will refuse to comply with any order of the Court compelling their production: “If the Court will insist on the production of the records or an authorization to defendants’ counsel, I am authorized to inform the Court that the plaintiff will not comply with any such order thereby implicating sanction by dismissal of the emotional injury damage claims.” Plaintiffs’ Letter at 5 ¶ 2.

“The plaintiff’s position is that no pre-RNC arrest incident mental health service records, however broadly or narrowly defined, have any bearing on the narrowly defined emotional reaction injury claims in this litigation [as described] since they are legally irrelevant and cannot provide any conceivable information relevant to this litigation and the damage claims encompassed therein.” Plaintiff’s Letter at 4 ¶ 1 (emphasis added). Plaintiff’s position directly contradicts the Court’s numerous prior rulings on this issue in the Consolidated RNC Cases. See MacNamara (KMK Hearing Transcript of August 29, 2005); Hershey-Wilson (Meyerson) (JCF Order of February 14, 2006); Hershey-Wilson (Meyerson) (KMK Order of April 20, 2006); Jarick (JCF Order of May 18, 2006); Concepcion (JCF Order of June 29, 2006); Hershey-Wilson (Meyerson) (KMK Order of September 20, 2006); Concepcion (JCF Order of September 25, 2006); Concepcion (JCF Order of October 24, 2006).

Based upon plaintiffs' representations that she will *not comply* with the Court's anticipated order -- and the prejudice that plaintiff already has caused to defendants by her repeated failures to produce the necessary discovery information to defendants over a period of many months -- defendants request that the Court dismiss this action in its entirety. See Rules 37(a), (b) and 41(b) of the Federal Rules of Civil Procedure.<sup>2</sup> Such a ruling, coming after both Your Honor and Judge Karas patiently have rejected counsel's arguments on this same issue on numerous prior occasions, will serve the vital interest of reminding counsel that they *must comply* with the Court's orders in these Consolidated RNC Cases -- and that litigation over the issue of mental health records in particular must come to an end.

Alternatively, defendants request that the Court enter an order (a) dismissing all of plaintiff's claims based upon physical and emotional injuries and damages (including the alleged failure to provide medical treatment while in custody) and (b) compelling complete and proper responses to all of defendants' remaining interrogatories and document requests. At the Court's request, defendants will provide a form of order consistent with the Court's rulings.

Very truly yours,

  
James Mirro

cc: James I. Meyerson, Esq. (by fax)

Enclosures (by hand only)

---

<sup>2</sup> See also In re Rezulin Products Liability Litigation, 223 F.R.D. 109, 111, 113-14 (S.D.N.Y. 2004) (Kaplan, J.) (dismissing with prejudice the complaints of numerous plaintiffs for failure to provide medical information and authorizations, which the court held were material deficiencies that had prejudiced defendants by "depriv[ing] them of the information necessary to move the cases forward"), *reconsideration denied in all material respects*, 2004 WL 1700618; In re Agent Orange Product Liability Litigation, 611 F. Supp. 1290, 1294 (E.D.N.Y. 1985) (Weinstein, C.J.) (dismissing plaintiff's action and reasoning that "plaintiff, having placed the origin of his illness in issue, may not now refuse to cooperate with defendants in discovery concerning the crucial question of causation"), *aff'd*, 818 F.2d 210, 212 (2<sup>nd</sup> Cir. 1987). In Rezulin, focusing on the importance of authorizations, the Court observed that "the lack of authorizations has prevented the defendants from conducting essential discovery of doctors, employers and insurers and from conducting meaningful depositions of these plaintiffs." 223 F.R.D. at 113.

Exhibit P



MICHAEL A. CARDOZO  
Corporation Counsel

THE CITY OF NEW YORK  
**LAW DEPARTMENT**  
100 CHURCH STREET  
NEW YORK, NY 10007

JAMES MIRRO  
Special Assistant Corporation Counsel  
phone (212) 788-8026 fax (212) 788-9776

November 15, 2006

**BY FAX**

The Honorable James C. Francis IV  
United States Magistrate Judge  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street - Room 1960  
New York, New York 10007-1312

***Re: Cohen v. The City of New York, et al.***  
***USDC SDNY 05 CV 6780 (KMK) (JCF)***

Dear Judge Francis:

On November 6, 2006, I wrote the Court seeking dismissal of plaintiff's claims for failure to produce a variety documents and for failure to answer interrogatories (another copy of that letter is attached as Exhibit "A" hereto).<sup>1</sup> At the conference with the Court on November 9, 2006, Your Honor suggested that the parties talk further about the discovery not produced to defendants to date. Since then, plaintiff's counsel has advised me that he will properly respond to the interrogatories and document requests in question, provided that his client refuses to produce her mental health records even for the Court's review in camera (Exhibit "B" hereto). Accordingly, defendants renew their request that the Court enter an order dismissing all of plaintiff's claims against all defendants for mental anguish and emotional distress allegedly suffered by her as a result of the incidents about which she complains in this action, including any claim for any intentional or negligent infliction of emotional distress and any claim for damages based upon mental anguish or emotional distress (however articulated).

Very truly yours,

A handwritten signature in black ink, appearing to read "James Mirro".

James Mirro

cc: James I. Meyerson, Esq. (by fax)  
Enclosures

<sup>1</sup> Should the Court need another copy of the exhibits to the November 6, 2006 letter, please advise me.

# Exhibit Q



MICHAEL A. CARDOZO  
Corporation Counsel

THE CITY OF NEW YORK  
**LAW DEPARTMENT**  
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NEW YORK, NY 10007

JAMES MIRRO  
Special Assistant Corporation Counsel  
phone (212) 788-8026 fax (212) 788-9776

November 16, 2006

**BY FAX**

The Honorable James C. Francis IV  
United States Magistrate Judge  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street - Room 1960  
New York, New York 10007-1312

**Re: Cohen v. The City of New York, et al.**  
**USDC SDNY 05 CV 6780 (KMK) (JCF)**

Dear Judge Francis:

I write briefly to respond to several points made by plaintiff in her letter of this morning with respect to her counseling records. First, the Court previously has considered and rejected the argument made by plaintiff's counsel. In the case of Alden v. Time Warner, Inc., 1995 WL 679238 (S.D.N.Y. 1995) (Francis, J.), Your Honor held that records of a marriage counselor were relevant to emotional distress damages and ordered those records produced. "Marital difficulties significant enough to prompt counseling are likely to have been an independent cause of emotional distress." Id. at \*2. "Moreover, if any counseling sessions postdated [the incident about which plaintiff has sued], it is probable that [plaintiff] discussed this source of stress with the counselor." Id. The same holds true in this case, in which plaintiff has represented that her counseling "extended over a period of perhaps ten years." See October 27, 2006 Letter to Your Honor from James I. Meyerson at 3 ¶ 3 (also attached to plaintiff's letter of this morning). Accordingly, defendants respectfully submit that their motion should be granted.

Very truly yours,

  
James Mirro

cc: James I. Meyerson, Esq. (by fax)

# Exhibit R

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

(ECF)

JULIA R. COHEN,

: 05 Civ. 6780 (KMK) (JCF)

Plaintiff,

: O R D E R

- against -

THE CITY OF NEW YORK, a municipal  
entity, NEW YORK CITY POLICE  
OFFICERS STEVEN CHOINSKI, Shield  
# 28673, and "JOHN DOES" and "SALLY  
ROWES," individually and in their  
official capacities, JOSEPH  
ESPOSITO, individually and in his  
official capacity as Chief of the  
New York City Police Department,  
RAYMOND KELLY, individually and in  
his capacity as New York City  
Police Commissioner, BRUCE SMOLKA,  
individually and in his official  
capacity as an Assistant Chief in  
the New York City Police Department  
and in Patrol Borough Manhattan  
South,

Defendants.

JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 11/17/06


Defendants having moved to dismiss the complaint for failure of plaintiff to provide information requested in discovery, or, in the alternative, to dismiss plaintiff's claims based on physical and emotional injuries while compelling production of discovery responses relevant to her other claims, it is hereby ORDERED as follows:

1. Plaintiff has declined to produce her "couple's counseling" records or to provide them for in camera review for a determination of their relevance to her claims of mental and emotional distress. This issue has been fully litigated and

decided in the following related cases: MacNamara, 04 Civ. 1926 (Ruling dated Aug. 29, 2005); Hershey-Wilson, 05 Civ 7026 (Order dated Feb. 2, 2006); Jarick, 05 Civ. 7626 (Order dated May 16, 2006); Concepcion, 05 Civ. 8501 (Order dated Oct. 23, 2006); and Abdell, 05 Civ. 8453 (Order dated Nov. 16, 2006). Accordingly, plaintiff's claims based on mental and emotional injury are dismissed.

2. Plaintiff has represented that she will produce the information sought by defendants in connection with the balance of her claims. Defendants' request for an order compelling production is therefore denied without prejudice to renewal in the event some further dispute arises.

SO ORDERED.

  
JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York  
November 17, 2006

Copies mailed this date:

James I. Meyerson, Esq.  
396 Broadway - Suite # 601  
New York, New York 10013

James Mirro, Esq.  
Special Assistant Corporation Counsel  
100 Church Street  
New York, New York 10007

# Exhibit S

**MEMO ENDORSED**

Law Office of  
**ALAN LEVINE**

99 Hudson Street, 14<sup>th</sup> Floor  
New York, New York 10013

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 3/28/06

Tel: (212) 739-7506  
Fax: (212) 431-4276

March 14, 2006

Hon. Kenneth M. Karas  
United States District Judge  
United States District Court  
500 Pearl Street, Room 1960  
New York, NY 10007-1312

Re: *Tarasik Abdell, et al. v. The City of New York, et al.*, 05 CV 8453

Dear Judge Karas:

I am an attorney for plaintiffs in the above-entitled action, which is one of the consolidated RNC cases. In one of those cases, *Kyla Hannah Hershey-Wilson v. City of New York*, 05 Civ. 7026, plaintiff has filed a motion pursuant to Rule 72, Fed.R.Civ.Proc., seeking review of a ruling by Magistrate Judge Francis concerning the production of psychotherapy records. Because the same issue will arise in *Abdell*, and because it presents an issue of great importance to the *Abdell* plaintiffs, I request permission to file a Memorandum of Law in support of the *Hershey-Wilson* motion. Assuming the request is granted, we would ask that the date for filing our Memorandum be scheduled to coincide with the date set for plaintiff to file her reply papers. We understand that those papers are currently due on March 24, 2006.

Counsel for the *Hershey-Wilson* plaintiff consents to this application. The City has refused to give its consent.

Respectfully submitted,

*Alan Levine* <sup>USD</sup>

Alan Levine

cc: Jeffrey Dougherty  
Assistant Corporation Counsel

*Denied*

SO ORDERED

*[Signature]*  
KENNETH M. KARAS U.S.D.J.

3/23/06

# Exhibit T

**MEMO ENDORSED**Law Office of  
**ALAN LEVINE**99 Hudson Street, 14<sup>th</sup> Floor  
New York, New York 10013Tel: (212) 739-7506  
Fax: (212) 431-4276

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>4/7/06</u>
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March 28, 2006

**BY TELEFAX**Hon. James C. Francis IV  
United States Magistrate Judge  
United States District Court  
500 Pearl Street, Room 1960  
New York, NY 10007-1312Re: Abdell, et al. v. City of New York, et al.  
05 Civ. 8453 (KMK)(JCF)

Dear Judge Francis:

I am co-counsel for plaintiffs in this RNC case and write concerning the City's request that plaintiffs produce records of any psychotherapy treatment during the past ten years. The request is premised on the allegation in the complaint that the plaintiffs suffered emotional distress as a result of their detention.

As you know, Judge Karas has held in one RNC case, *MacNamara v. City of New York*, 04 Civ. 9216 (KMK)(JCF), that, given a comparable allegation in the complaint, psychotherapy records must be produced (albeit with an opportunity for plaintiffs to produce the records *in camera* for a determination of their relevance). In another RNC case, *Hershey-Wilson v. City of New York*, 05 Civ. 7026 (KMK)(JCF), the plaintiff has filed Rule 72 objections to an order of this Court compelling production of such records.

Four of the plaintiffs in *Abdell*, Christy Turner, Benjamin Bernard, Michael Joseph, and Robert J. Siegel, have advised counsel that they will not produce records of psychotherapy treatment unrelated to the incident alleged in the complaint, even for inspection *in camera*. The four plaintiffs do not intend to offer evidence on this issue through a treating psychotherapist or expert. The emotional distress they experienced could not be characterized as a diagnosable psychological injury or mental condition, and was limited in time to their arrest and detention and a brief period thereafter. They have been advised by counsel that their claims of emotional distress may nonetheless be dismissed if they fail

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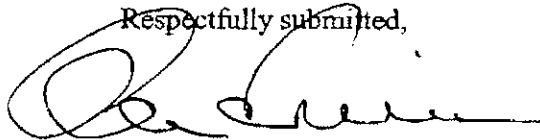
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to comply with an order to produce the records. They respond that they are prepared to suffer dismissal of their emotional distress claims rather than produce the records.

Given the ruling in *MacNamara*, we understand that you would issue an order compelling production of the documents, and given your February 7, 2006, memo endorsement in *Crotty v. The City of New York*, 05 CV 7577 (KMK)(JCF) and *Scharf v. The City of New York*, 05 CV 10012 (KMK)(JCF)(copy attached), we understand that you will then consider issuing an order dismissing the above-named plaintiffs' claims for emotional distress.

We believe an order compelling production is unnecessary, given our clients' intention to refuse to produce the records. If you believe an order to dismiss their emotional distress claims is appropriate, given that refusal, we ask that you issue that order as promptly as possible. We intend to file Rule 72 objections on this issue, and are hopeful that those objections can be considered by Judge Karas at the same time that he hears argument on the same issue in *Hershey-Wilson*. That argument is scheduled for April 20, 2006.

Respectfully submitted,



Alan Levine

cc: Jeffrey A. Dougherty  
Assistant Corporation Counsel

4/7/06

Application denied. While I appreciate plaintiffs' desire to expedite a determination, the record is simply incomplete in the absence of an adjudicated motion to compel or motion to dismiss for failure to respond to discovery.

SO ORDERED,

James C. Francis IV  
JSM J